

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of

**Implementation of the
Telecommunications Act of 1996:**

**Telecommunications Carriers' Use
of Customer Proprietary Network
Information and Other Customer
Information**

CC Docket No. 96-115

**EMBARQ LOCAL OPERATING COMPANIES'
REPLY COMMENTS**

Embarq Corporation,¹ on behalf of its incumbent local, competitive local, long distance, and wireless divisions, hereby respectfully submits its reply to comments filed on April 26, 2006 in response to the Notice of Proposed Rulemaking² (NPRM) in the above-captioned proceeding.

There is no debate that there is a problem with improper access to and use of Customer Proprietary Network Information and other customer proprietary information (referred to collectively throughout as "CPNI"). The cause and extent of the problem; however, is

¹ On May 17, 2006, Sprint Nextel Corporation transferred the Sprint Local Operating Companies that were Sprint's incumbent local exchange carrier operations by means of a stock dividend to shareholders and the creation of a new holding company, Embarq Corporation. The former Sprint Local Telephone Operating Companies are now subsidiaries of Embarq Corporation and are independent of Sprint Nextel Corporation. Additionally, Embarq Corporation's subsidiaries, Embarq Communications, Inc. and Embarq Communications of Virginia, Inc. provide long distance and wireless services.

² *In the Matter of Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; Petition for Rulemaking to Enhance Security and Authentication Standards for Access to Customer Proprietary Network Information*, Notice of Proposed Rulemaking, 21 FCC Rcd 1782 (2006) ("NPRM"). In the NPRM the Commission granted a Petition for Rulemaking filed by the Electronic Privacy Information Center ("EPIC Petition") expressing concerns about data brokers taking advantage of alleged inadequate security standards to gain access to customers' phone records.

debatable. Neither the EPIC Petition nor the Commenters provide definitive information on the various ways CPNI is improperly accessed and provide little, if any, evidence that the cause is in any way traceable to carriers' systems and processes used to protect CPNI or to inadequate regulation by the Commission. There also is little, if any, evidence that EPIC's recommendations will cure the problem or problems.

Rather, most parties agree that "[t]here can be little question that the practices of the data broker industry pose significant privacy and security risks for individual telecommunications customers."³ Further, Embarq agrees with Verizon that "the best way to attack the problem is to go after its source: the wrongdoers themselves";⁴ and with Qwest that "data brokers who engage in pretexting should face the full wrath of regulatory agencies."⁵ Embarq believes that, where appropriate, the data brokers must also face the criminal justice system.

Going after the actual known wrongdoer will do considerably more to stem the problem than imposing overly broad and burdensome regulations on carriers and customers, especially given the paucity of evidence that such regulation will further the protection of CPNI. In this regard, Embarq supports Qwest's call for a tailored solution targeted at specific parties engaged in bad or lax behavior:

...regulatory reaction should be confined to those bad actors, or to carriers demonstrably lax about their information security, customer authentication or information-disclosure practices. Costly and operationally burdensome government regulations should not be inflicted on well-intentioned carriers in the absence of proven public interest benefits.⁶

³ Comments of Attorneys General of the Undersigned States at p. 4.

⁴ Comments of Verizon at p. 3.

⁵ Comments of Qwest Communications International Inc. To Additional Customer Proprietary Network Information Rulemaking at p. 3.

⁶ *Id.*

Such a tailored solution is more desirable than EPIC's proposals. This is especially true as very few parties agree that EPIC's proposed recommendations will prove beneficial. Concerns about the effectiveness of the proposed recommendations are voiced by carriers and other parties. The Missouri Public Service Commission "questions whether these methods will provide the desired level of security given the current actions and claims of entities currently obtaining unauthorized access to CPNI."⁷

The EPIC Petition recommends the FCC adopt five proposals: mandatory use of customer set passwords; audit trails; encryption; limitation of data retention; and notifying customers of breaches. Yet none of these recommendations will effectively shut down the wrongful pretexting activities of data brokers.

Notably, each of EPIC's proposals is flawed. But perhaps mandated passwords most plainly falls short of deterrence while at the same time most patently burdens the customers and carriers. The Missouri Public Service Commission stated, "it would be a monumental task to establish passwords for all existing telecommunications-related accounts."⁸ This task would fall not only on the carriers, but also on customers who already struggle with too many passwords to remember.⁹ More importantly, data brokers who have already proven themselves capable of uncovering personally identifiable information about customers will not be stopped by consumer set passwords. However, Embarq agrees with Verizon and others that providing customers with

⁷ Comments of the Public Service Commission of the State of Missouri at p. 2.

⁸ *Id.*

⁹ See, e.g., Comments of Qwest Communications International Inc. To Additional Customer Proprietary Network Information Rulemaking at pp. 20-22 and Comments of Sprint Nextel Corporation at pp. 10-11.

the option to set their own password if they so desire, may provide some extra level of protection without creating undue burdens for customers or carriers.¹⁰

EPIC's other recommendations suffer from a similar problem, mainly that they will not deter the abuse of CPNI. The use of audit trails and notifying customers of breaches will provide, at best, some benefit after the customer's CPNI has been abused, but will do nothing to stop the data brokers from abusing CPNI. Nor has EPIC or other parties explained how limitations on data retention will deter or prevent pretexting. Such limitations will be unduly burdensome and costly to implement, and will also expose carriers to potential liability if records cannot be maintained for at least as long as the federal and state statute of limitations periods. The absence of such records will inhibit a carrier's ability to defend itself against baseless claims. Finally, given that so far there has been no evidence of carriers' database security being breached – an event that encryption would help prevent – encryption is not a solution to the current issue. Clearly, encryption will not prevent pretexting. Numerous parties made each of these points abundantly clear in their comments and Embarq will not belabor the record by repeating those comments.

Additionally, the Commission requested comments on whether it needs to reconsider the use of opt-out authorization for sharing CPNI with joint venture partners and independent contractors. Numerous parties objected and Embarq shares their concern.¹¹ For two equally compelling reasons, mandatory opt-in authorization should be rejected. First, there is no credible evidence that carriers' practices, in conformance with existing rules, of sharing CPNI with joint venture partners or independent contractors leads to the wrongful disclosure or use of CPNI.

¹⁰ See generally, Comments of Verizon at p. 8, CTIA – The Wireless Association® Comments at p. 13, and Comments of AT&T at p. 11.

¹¹ See, e.g., Comments of Verizon at p. 22, Comments of AT&T, Inc. at pp. 17-19, and Comments of Alltel Corporation at pp. 3-4.

Absent evidence of abuse or wrong doing, there is no justification or rationalization for the FCC to reconsider. Second, the use of opt-out authorization has already been judicially reviewed and determined to be acceptable.¹²

Finally, Embarq agrees with Verizon that a proposal to permit customers to put a 'no release' order on their CPNI violates Section 222 (47 U.S.C. § 222), will confuse and frustrate customers, and prove unworkable.¹³ Verizon's highly likely scenario of customers changing their minds is more than sufficient to show why such a provision, if enforced literally so as to be an effective deterrent to data brokers, is not the type of regulation the Commission need consider further.

Embarq believes that further inquiry into the activities of data brokers' pretexting activities and other means of wrongfully accessing and using CPNI needs to be undertaken. That such activity puts customers at serious risk is without question. However, rather than adopt unnecessary regulations that will not deter the wrongful activity, the government, industry, and consumer groups should continue to work together to actively target the wrong doers – be it the data brokers or others.

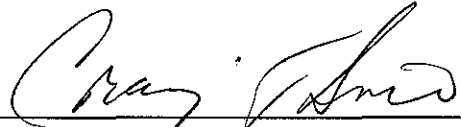
If the Commission believes it must adopt some of the proposed recommendations it must do so in a technology neutral manner and through means that address the real cause of the improper access and effectively deters misconduct. The communications industry is rapidly evolving with increasing inter-modal competition and new technology platforms that deliver communications in addition to and in competition with traditional wireline platforms. Focusing solely on one group or technology will competitively disadvantage a segment of the industry and ultimately prove ineffective.

¹² *U.S. West, Inc. v. FCC*, 182 F.3d 1224 (10th Cir. 1999).

¹³ Comments of Verizon at P. 21.

Respectfully submitted,

EMBARQ LOCAL OPERATING COMPANIES


By 

Craig T. Smith
KSOPHN0214-2A671
6450 Sprint Parkway
Overland Park, KS 66251
(913) 315-9172

June 2, 2006

CERTIFICATE OF SERVICE

I hereby certify that a copy of Embarq Local Operating Companies' Reply Comments in CC Docket No. 96-115 was delivered by electronic mail or First Class, postage prepaid, U.S. Mail on this 2nd day of June, 2006 to the parties on the attached list.


Craig T. Smith

ECFS

Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

VIA E-MAIL

Janice Myles
Competition Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW, Rm. 5-C140
Washington, DC 20554
janice.myles@fcc.gov

Best Copy and Printing, Inc.
Portals II
445 12th Street, SW, Rm. CY-B402
Washington, DC 20554
fcc@bcpiweb.com

U.S. FIRST CLASS MAIL

Richard M. Sbaratta
J. Phillip Carver
BellSouth Corporation
Suite 4300
675 West Peachtree Street, NE
Atlanta, GA 30375-0001

Bennett L. Ross
BellSouth Corporation
Suite 900
1133 21st Street, NW
Washington, DC 20036-3390

Richard H. Rubin
Gary L. Phillips
Paul K. Mancini
AT&T Inc.
1401 I Street, NW, Suite 400
Washington, DC 20005

Mary C. Albert
COMPTel
1900 M Street, NW
Suite 800
Washington DC 20036

William P. Hunt, III
Level 3 Communications, LLC
1025 Eldorado Boulevard
Broomfield, CO 80021

Adam Kupetsky
WilTel Communications, LLC
One Technology Center TC15H
Tulsa, OK 74103

Seema M. Singh
Christopher J. White
New Jersey Division of the
Ratepayer Advocate
31 Clinton Street, 11th Floor
Newark, NJ 07102

Craig J. Brown
Timothy M. Boucher
Qwest Communications International, Inc.
Suite 950
607 Fourteenth Street, NW
Washington, DC 20005

Timothy P. Tobin
Cole, Raywid & Braveman, L.L.P.
1919 Pennsylvania Avenue, N.W., Suite 200
Washington, D.C. 20006

Dennis P. Cuevas
National Association of Attorney Generals
750 First Street, N.E., Suite 1100
Washington, D.C. 20002

Kathleen Greenan Ramsey
Sonnenschein Nath & Rosenthal LLP
1301 K Street, N.W., Suite 600, East Tower
Washington, D.C. 20005

Gretchen Duma
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, California 94102

Kathryn Marie Krause
Quest Communications International Inc.
607 14th Street, N.W., Suite 950
Washington, D.C. 20005

Mar Zwillinger
Sonnenschein Nath & Rosenthal LLP
1301 K Street, N.W., Suite 600, East Tower
Washington, D.C. 20005

Thomas J. Surgue
Kathleen Ham
T-Mobile USA, Inc.
401 9th Street, N.W., Suite 550
Washington, D.C. 20004

M. Robert Sutherland
Cingular Wireless LLC
5565 Glenridge Connector, Suite 1700
Atlanta, Georgia 30342

Sharon Schawbel
RNK Inc. d/b/a RNK Telecom
333 Elm Street, Suite 310
Dedham, Massachusetts 02026

Scott Delacourt
Wiley Rein & Fielding LLP
1776 K Street, N.W.
Washington, D.C. 20006

Ronald L. Ripley
Dodson Communications Corporation
14201 Wireless Way
Oklahoma City, Oklahoma 73134

Edward Felten
Princeton University Students
35 Olden Street
Princeton, New Jersey 08540

Theodore R. Kingsley
BellSouth Corporation
675 West Peachtree Street, N.E., Suite 4300
Atlanta, Georgia 30375

Glenn S. Rabin
Alltel Corporation
601 Pennsylvania Avenue, N.W., Suite 720
Washington, DC 20004

John Heitmann
Kelley Drye & Warren LLP
1200 19th Street, N.W., 5th Floor
Washington, D.C. 20036

Karen Brinkham
Latham & Watkins LLP
555 Eleventh Street, N.W., Suite 1000
Washington, D.C. 20004

Terry J. Romine
US LEC Corp.
6801 Morrison Boulevard
Charlotte, North Carolina 28211

Jeffery A. Marks
Latham & Watkins LLP
555 Eleventh Street, N.W., Suite 1000
Washington, D.C. 20004

A. Richard Metzger, Jr.
Lawler, Metzger, Milkman & Keeney, LLC
2001 K Street, N.W., Suite 802
Washington, D.C. 20006

Thomas J. Moorman
Woods & Aitken LLP
2154 Wisconsin Avenue, N.W., Suite 200
Washington, D.C. 20007

Danielle Frappier
Cole, Raywid & Braveman, L.L.P.
1919 Pennsylvania Avenue, N.W., Suite 200
Washington, D.C. 20006

Valerie M. Barrish, FBI
Department of Justice & Dept of Homeland Security
935 Pennsylvania Avenue, N.W.
Washington, D.C. 20535

Davida Grant
AT&T Inc.
1401 I Street, N.W., Suite 1100
Washington, D.C. 20005

Jim Baker
Latham & Watkins
555 Eleventh Street, N.S., Suite 1000
Washington, D.C. 20004

Daniel L. Brenner
National Cable & Telecommunications Association
1724 Massachusetts Avenue, N.W.
Washington, D.C. 20036

John T. Scott III
Verizon Wireless
1300 I Street, N.W., Suite 400 West
Washington, D.C. 20005

Lynn R. Charytan
Wilmer Cutler Pickering Hale and Dorr LLP
1875 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Thomas Jones
Wilkie Farr & Gallagher
1875 K Street, N.W.
Washington, D.C. 20006

Cammie Hughes
Texas Statewide Telephone Cooperative, Inc.
3721 Executive Center Drive, Suite 200
Austin, Texas 78731

David L. Nace
Lukas Nace Gutierrez & Sachs
1650 Tysons Boulevard, Suite 1500
McLean, Virginia 22102

TCA, Inc.-Telcom Consulting Associates
1465 Kelly Johnson Boulevard, Suite 200
Colorado Springs, Colorado 80920

Jason Oxman
Comptel
1900 M Street, N.W., Suite 800
Washington, D.C. 20036

Jill Canfield
National Telecommunications Cooperative Assn.
4121 Wilson Boulevard, 10th Floor
Arlington, Virginia 22203

Joseph K. Witmer
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, Pennsylvania 17105

Robin E. Tuttle
United States Telecom Association
607 14th Street, N.W., Suite 400
Washington, D.C. 20005

Christopher J. White
New Jersey Division of the Ratepayer Advocate
13 Clinton Street, 11th Floor
P.O. Box 46005
Newark, New Jersey 07101

Matthew Brill
Latham & Watkins LLC
800 Connecticut Avenue, N.W., Suite 800
Washington, D.C. 20006

Kenneth E. Hardman
American Association of Paging Carriers
2154 Wisconsin Avenue, N.W., Suite 250
Washington, D.C. 20007

Chris Jay Hoofnagle
Electronic Privacy Information Center
1718 Connecticut Avenue, N.W., Suite 200
Washington, D.C. 20009

Brian Ford
OPASTCO
21 Dupont Circle, N.W., Suite 700
Washington, D.C. 20036

Elizabeth R. Sachs
Lukas Nace Gutierrez & Sachs
1650 Tysons Boulevard, Suite 1500
McLean, Virginia 22102

Matthew Brill
Latham & Watkins
555 Eleventh Street, N.S., Suite 1000
Washington, D.C. 20004

Nicole E. Paolini-Subramanya
Cinnamon Mueller
307 N. Michigan Avenue, Suite 1020
Chicago, Illinois 60601

Stephen A. Reilly
The Public Utility Commission of Ohio
180 East Broad Street, 9th Floor
Columbus, Ohio 43215

William K. Haas
Missouri Public Service Commission
P.O. Box 360
Jefferson City, Missouri 65101

Robert L. Ritter
Crown Castle International Corp.
2000 Corporate Drive
Canonsburg, Pennsylvania 15317

Alexicon Telecommunications Consulting
2055 Anglo Drive, Suite 201
Colorado Springs, Colorado 80918

Andre Lipman
Axel Spies
McManis & Monsalve
2020 K Street, N.W.
Washington, D.C. 20006

Beth Givens
Privacy Rights Clearinghouse
3100 5th Avenue, Suite B
San Diego, California 92103

Kim Phan
13169 Fox Hunt Lane, No. 146
Herndon, Virginia 20171

John Blevins
Covington & Burling
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, W.W.
Washington, D.C. 20554

Suzi Ray McClellan
Mark Gladney
Texas Office of Public Utility Counsel
1701 North Congress Avenue, Suite 9-180
Austin, Texas 78701

David C. Bergmann
Terry L. Etter
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215

Philip F. McClelland
Barrett C. Sheridan
Office of Consumer Advocate
555 Walnut Street, 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101

Stephen Ward
Paulina McCarter Collins
Main Public Advocate Office
112 State House Station
Augusta, Maine 04333

Robert G.. Mork
Indiana Office of Utility Consumer Counselor
100 N. Senate Avenue, Room N501
Indianapolis, Indiana 46204